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No. 82-5360

SUPREME COURT OF THE UNITED STATES

October Term, 1982

IN THE MATTER OF THE LEGISLATIVE DISTRICTING OF THE STATE,
RICHARD L. ANDREWS v. GOVERNOR OF MARYLAND

On Appeal from the Court of Appeals of Maryland

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether the use of three-member Districts for the election of new Members of the Maryland House of Delegates from Baltimore City after 1980 Census invidiously discriminates against Blacks in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States ,and U.S. Public Law 97-205?

2. Whether the use of three-member Districts for the election of new Members of the Maryland House of Delegates from Baltimore City after 1980 Census invidiously discriminates against Republicans in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

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STATEMENT OF GROUNDS

I. Petition for review of state legislative reapportionment plan by Maryland Court of Appeals brought by registered voter pursuant to Maryland Constitution Article III, Section 5 on grounds that plan violated Fourteenth Amendment rights of Blacks and Republicans.

II. Per Curiam final Order filed June 4, 1982.
Notice of Appeal filed August 26, 1982 in the Maryland Court of Appeals.

III. 28 U.S.C 1257 (2) confers jurisdiction on Supreme Court in cases where a state statute has been challenged on grounds of violating a Federal Constitutional guarantee in a state court, and the state court has affirmed the statute's validity.

CONSTITUTIONAL PROVISIONS AND STATUTES

U.S. Constitution, Amendment XIV

U.S. Public Law 97-205

Maryland Constitution, Article III, Section 5

Maryland House Joint Resolution 32 (1982)

Text in Appendix

STATEMENT OF THE CASE

The Governor of Maryland, largely following the scheme set out by an advisory committee of four Democrats and one Republican which he had appointed, proposed a plan to the Maryland General Assembly for the reapportionment of that body. With only technical changes, they adopted his plan. Acting under a right granted by the Maryland Constitution, Article III, Section 5, the Appellant in this case filed a petition for judicial review of this reapportionment plan in the state's highest court, the Court of Appeals. This petition, and the memorandum, the exceptions to the report and recommendations of the Special Master appointed by the Court of Appeals to hear the case, and oral argument before the full Court of Appeals of the Appellant, all raised the questions of invidious racial and political discrimination on Federal grounds in regard to the apportionment of Delegate seats among three-member districts in the City of Baltimore. The Master, after taking evidence, receiving memoranda, and hearing argument, reccomended that Appellant's petition be dismissed. Appellant excepted to this, and after written and oral argument before the Court of Appeals, that Court filed a Per Curiam Order dismissing his petition, an opinion to be filed later. Said opinion has not yet appeared. Congress then adopted P.L.97-205, changing the standard of proof in voting rights cases nation-wide. Appellant subsequently filed this Appeal under 28 U.S.C. 1257 (2).

STATEMENT OF SUBSTANTIALITY

In this case the Maryland Court of Appeals has decided Federal questions concerning equal protection and voting rights in reapportionment of a state legislature. Its decision affirming the state statutory reapportionment plan in the face of challenges on Federal grounds is brought into question by the Supreme Court's decision in Rogers v. Lodge, ___U.S.___,50 U.S.L.W.5041, and by the Congress' action amending the Voting Rights Act of 1965 by Public Law 97-205. These are important questions which should be settled by the Supreme Court. Many other like cases are or soon will be pending in which action is or will be awaiting authoritative settlement of the questions presented herein, in which many,many people's rights throughout the states will remain uncertain until these disputes are finally adjudicated. This is a complex and continuing problem affecting virtually all of the states and their peoples in a concrete and direct fashion immediate and substantial in nature.

Respectfully submitted,

Richard L. Andrews 9/2/82

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Appendix

IN THE MATTER OF	*	In the
	*	Court of Appeals
LEGISLATIVE DISTRICTING	*	of Maryland
	*	Misc. Nos. 2 through 11
OF THE STATE	*	September Term, 1982
	*	

PER CURIAM ORDER

WHEREAS, petitions were filed by various registered voters of the State with this Court as authorized by Section 5 of Article III of the Constitution of Maryland challenging the constitutionality of the 1982 Legislative Districting Plan which was approved and became law on February 26, 1982; and

WHEREAS, this Court appointed a Special Master to schedule hearings and to submit his findings of fact and conclusions of law to the Court; and

WHEREAS, this Court has considered the findings and conclusions of the Special Master, the exceptions filed thereto and the oral arguments of the parties and *amici curiae* presented in support of their respective positions; now, therefore, it is this 4th day of June, 1982

ORDERED, by the Court of Appeals of Maryland, a majority of the Court concurring, that for reasons to be set forth in an opinion later to be filed, the petitions

challenging the 1982 Legislative Districting Plan (House Joint Resolution No. 32) having failed to establish any violations of the federal constitution or the Constitution of Maryland, the exceptions to the Special Master's report taken by the State be, and they are hereby, sustained and all other exceptions are hereby overruled, and the legislative districts of the State shall be as established in and by House Joint Resolution No. 32; and it is further

ORDERED, that pursuant to the provisions of Section 5 of Article III of the Constitution of Maryland, the provisions of Section 9 of Article III of the Constitution shall govern the age, citizenship and residency requirements for election of Senators and Delegates to the General Assembly of Maryland except that for the primary and general elections of 1982, only, any person seeking election as a Senator or Delegate must have resided in the district which he or she seeks to represent not later than July 6, 1982.

/s/ Robert C. Murphy
Chief Judge

In the Matter of the Legislative Districting of the State 1982

In the Court of Appeals of Maryland

TO THE HONORABLES, CHIEF JUDGE MURPHY AND THE ASSOCIATE JUDGES OF THE COURT OF APPEALS OF MARYLAND

REPORT OF THE SPECIAL MASTER

History of the Legislative Plan

A brief summary of the sequence of activities leading to eventual passage of H.J.R. 32 may be of value to the Court.

On April 13, 1981, Governor Harry Hughes appointed an Advisory Committee on Reapportionment (hereafter Advisory Committee) with the Honorable William S. James as Chairman, and with Senate President, James Clark, Jr.; House Speaker, Benjamin L. Cardin; Dr. C. Vernon Gray, a professor at Morgan State University; and Barbara Fetterhoff, a Republican and a member of the League of Women Voters, as Members.

The Advisory Committee conducted seventeen hearings in all parts of the State (see Minutes, Exhibit 1 P) between May 19, 1981 and December 8, 1981, and heard the testimony of 213 persons (see: Affidavit of James, Exhibit 2 M). Guidelines were adopted; legislative input was requested and a maximum standard of plus or minus 5% population deviation fixed (Exhibit 2 M).

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For planning purposes, the State was divided into five regions; (1) Eastern Shore Planning Area (Eastern Shore and Harford County), 5 districts; (2) Baltimore City Planning Area, 9 districts; (3) Baltimore County Planning Area, 7 districts; (4) Central and Western Maryland Planning Area (the 5 Western Maryland Counties, Montgomery County, a small portion of Baltimore County and the excess population from Southern Maryland), 11 districts; (5) Central and Western Maryland Planning Area (Southern Maryland and most of Anne Arundel and Prince George's Counties, 13 districts.

The Advisory Committee made this brief summary of its labors:

> "The Committee plan is entirely consistent with its goal of substantial population equality. No senatorial district contains a population deviation of + 5%. Although it was constitutionally impossible to maintain all county lines, the Committee strove to keep intact all municipal lines to fashion compact and contiguous districts. Finally, the Committee's Plan does not dilute existing minority strength and, in fact, in some cases augments that strength." (Affidavit of James, Exhibit 2 H, p. 3).

The Report of the Advisory Committee may be found in the Maryland Register, Part II, Vol. 8, Issue 25, dated 2/11/81, pp. 1-94 incl. (Exhibit 2 F).

Subsequart to the filing of the Report of the Advisory Committee, Governor Hughes conducted a hearing on December 21, 1981, at which 24 witnesses spoke concerning redistricting in many State areas (see: Minutes, Exhibit 1 D-B); and on December 23, 1981, at which 46 witnesses addressed the issue of redistricting. (See: Minutes, Exhibit 1 D-C).

Governor Hughes adopted most of the recommendations of the Advisory Committee but did not do so with respect to 13A, 13B, 14A and 14B (see: Affidavit Ex. 1 D).[1]

Federal and State constitutional questions are raised in all petitions filed in the subject proceedings. In the light of this fact and to avoid repetition of quotations from decided cases in the seriatum consideration of the several petitions, this report will discuss the decided cases believed to be controlling on the constitutional issues in accordance with the following outline:

1. United States Constitution
   a. Population equality
   b. Freedom from invidious discrimination
2. Maryland Constitution.

1. The differences between the Advisory Committee Plan and the Legislative Plan will be discussed infra under the heading Miscellaneous Petition 3.

United States Constitution
Population Equality

The seminal case concerning the constitutional power of the Federal Courts to control State action in the establishment of legislative districts within its borders is Baker v. Carr, 369 U.S. 186 (1962).

In Baker v. Carr, Mr. Justice Brennan, speaking for the Court, declared at page 197:

> "[W]e hold today only (a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) because appellees raise the issue before this Court, that the appellants have standing to challenge the 'Tennessee apportionment statutes.'"

The Supreme Court did not reach the merits of the cause, being content to declare that an adequate complaint had been filed.

Justice Frankfurter's dissent (joined only by Mr. Justice Harlan) declared that "The Court today reverses a uniform course of decision"[2] and stated that historically, "The Court has been particularly unwilling to intervene in matters concerning the structure and organization of the political institutions of the States";[3] distinguished the cases involving black disfranchisement;[4]

2. At page 266; compare:
Colegrove v. Green, 328 U.S. 549 (1946);
MacDougall v. Green, 335 U.S. 281;
South v. Peters, 339 U.S. 276;
Anderson v. Jordan, 343 U.S. 912.
3. At page 284.
4. At page 285.

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stated that courts are not fit instruments of decision in "the composition of those large contests of policy traditionally fought out in non-judicial forums, by which governments and the actions of government are made and unmade"[5]; and particularly was critical of the Court's failure to "vouchsafe the lower courts - State and federal - guidelines for formulating specific, definite, wholly unprecedented remedies for the inevitable litigations that today's umbrageous disposition is bound to stimulate in connection with politically motivated reapportionments in so many States."[6]

The first Supreme Court progeny explicating Baker v. Carr, not directly related to legislative redistricting, applied its holdings as to jurisdiction, justiciability and standing to State nominating procedures[7] and to State congressional redistricting,[8] and required population equality in all elections within the State.

5. At page 287.
6. At page 267.
7. Gray v. Sanders, 372 U.S. 368 (1963) (struck down under the 14th Amendment's Equal Protection Clause Georgia's county unit system for nomination of United States Senate candidates and candidates for statewide office).
8. Wesberry v. Sanders, 376 U.S. 1 (1963) (struck down congressional redistricting because "the command of Article 1, Section 2, that Representatives be chosen 'by the people of the several States,' means that as nearly as practicable one man's vote in a congressional election is to be worth as much as another's."

Justice Frankfurter's forecast "of inevitable litigations" proved prophetic. In the course of 2-1/4 years following the decision in Baker v. Carr, a frenzy of legislative and judicial activity occurred throughout the United States, culminating in six guideline decisions of the Supreme Court filed on June 15, 1964.

The leading case was Reynolds v. Sims, 377 U.S. 533, in which the Supreme Court held unconstitutional three Alabama legislative reapportionment plans. Under the existing plan, 25.7 percent of the state's population lived in counties which could elect a majority of the house, and 25.1 percent lived in senatorial districts electing a majority of the state senate. Under a proposed constitutional amendment, 43 percent of the state's population would live in counties electing a majority of the house, and only 19.4 percent of the state's population would elect a majority of the state senate. Under "standby" legislation, 37 percent of the state's population would elect a majority of the house, while 27.6 percent would elect a majority of the senate.

In rejecting these plans, the Court made the following holdings:

> "We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State." (At p. 568.)

It noted that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents. What the Equal Protection Clause requires of the states, it said, is "an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." At 577.[9]

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9. The remaining five cases decided with Reynolds, supra, were WMCA v. Lomenzo, 377 U.S. 633 (1964) (invalidating New York's legislative apportionment plan, under which 37.5% of the population lived in districts electing a majority of the state assembly, and 38.1% in districts electing a majority of the senate. The Court stated at page 635: "However complicated or sophisticated an apportionment scheme might be, it cannot, consistent with the Equal Protection Clause, result in a significant undervaluation of the weight of the votes of certain of a state's citizens merely because of where they happen to reside."); Maryland Committee v. Tawes, 377 U.S. 656 (1964) (holding unconstitutional Maryland's apportionment procedures, pointing out that 14.1% of the population would elect a majority of the senate, and 24.7% would elect a majority of the house, and adding that "[Maryland's reliance on the so-called federal analogy as a sustaining principle for the Maryland apportionment scheme . . . is clearly misplaced." at 675); Davis v. Mann, 377 U.S. 678 (1964) (striking down Virginia's apportionment procedures, holding that

The definitive case explicating the permissible deviation from population equality in state legislative redistricting is Mahan v. Howell, 410 U.S. 315 (1973). In Mahan, supra, a four-judge District Court, relying on Kirkpatrick v. Preisler, 394 U.S. 526; Wells v. Rockefeller, 394 U.S. 542, and Reynolds v. Sims, supra, concluded that a maximum 16.4% variation in the legislative redistricting of Virginia required it to declare the legislative

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8. (contd.) attempts to balance urban and rural power do not justify deviations from population equality, even if those deviations do not exceed those found in the composition of the Federal Electoral College); Roman v. Sincock, 377 U.S. 695 (1964) (rejecting Delaware's apportionment procedures, noting, however, that reapportionment does not lend itself to precise, mathematical formulas. Rather, the issue is whether any minor deviations that do occur are free from "any taint of arbitrariness or discrimination" at 709); Lucas v. Colorado General Assembly, 377 U.S. 713 (1964) (declaring unconstitutional a state Constitutional Amendment, which was adopted by the Colorado electorate in 1962, which provided for the apportionment of the State House on the basis of population, but which essentially maintained the existing apportionment of the senate, made on the basis of factors other than strict equality of population. Said the Court:

> "An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State's electorate, if the apportionment scheme adopted by the voters fails to measure up to the requirements of the Equal Protection Clause. Manifestly, the fact that an apportionment plan is adopted in a popular referendum is insufficient to sustain its constitutionality or to induce a court of equity to refuse to act." At 736.

reapportionment statutes unconstitutional. In reversing the District Court, the Supreme Court explained that its decisions in Kirkpatrick, supra, and Wells, supra, dealt with congressional districting under the command of Article 1, Section 2 of the United States Constitution. Therefore, "[t]he principal question . . . presented for review is whether or not the Equal Protection Clause of the Fourteenth Amendment likewise permits only 'the limited population variances which are unavoidable despite a good faith effort to achieve absolute equality' in the context of state-legislative reapportionment." (410 U.S. at 320; footnote omitted.) It concluded that

> "the constitutionality of Virginia's legislative redistricting plan was not to be judged by the more stringent standards that Kirkpatrick and Wells make applicable to congressional reapportionment, but instead by the equal protection test enunciated in Reynolds v. Sims, supra. . . . We . . . reaffirm its conclusion that '[s]o long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature.' Id. at 329."[10]

10. Mahan v. Howell, supra, at 324-25.

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Using this more flexible standard, the Court held that since the people of Virginia had decided to grant the General Assembly the power to enact local legislation dealing with political subdivisions, the General Assembly's policy of maintaining the integrity of traditional county and city boundaries in drafting legislative district lines was constitutionally valid and that this policy was indeed furthered by the plan adopted by the legislature. The only remaining question was whether the population divergences resulting from the plan were within tolerable limits. On this point, the Court noted:

> "There was uncontradicted evidence offered in the District Court to the effect that the legislature's plan, subject to minor qualifications, 'produces the minimum deviation above and below the norm, keeping intact political boundaries. . . .' (Defendants' Exhibit 8.)" At 326.

The Court concluded that these population disparities did not exceed constitutional limits.

> "Neither courts nor legislatures are furnished any specialized calipers that enable them to extract from the general language of the Equal Protection Clause of the Fourteenth Amendment the mathematical formula that establishes what range of percentage deviations is permissible, and what is not. The 16-odd percent maximum deviation that the District Court found to exist in

> the legislative plan for the reapportionment of the House is substantially less than the percentage deviations that have been found invalid in the previous decisions of this Court. While this percentage may well approach tolerable limits, we do not believe it exceeds them. Virginia has not sacrificed substantial equality to justifiable deviations.
>
> ". . . We, therefore, hold the General Assembly's plan for the reapportionment of the House of Delegates constitutional and reverse the District Court's conclusion. . . ." At 329.

There having been no subsequent deviation from the rule announced in Mahan v. Howell, supra, it is plain that decisions in congressional redistricting litigation simply are irrelevant insofar as population equality is concerned.

(b). Invidious Discrimination

The Supreme Court has held that invidious discrimination must be avoided against racial or ethnic minorities. Gomillion v. Lightfoot, 364 U.S. 339, 81 S.Ct. 125 (1960); Wright v. Rockefeller, 376 U.S. 52, 84 S.Ct. 603 (1964); White v. Regester, 412 U.S. 755, 93 S.Ct. 2332 (1973); Whitcomb v. Chavis, 403 U.S. 124, 91 S.Ct. 1858 (1971); Chapman v. Meier, 420 U.S. 1, 95 S.Ct. 751 (1975); City of Mobile, Ala. v. Bolden, 446 U.S. 55, 100 S.Ct. 1490 (1980). It has also afforded this same protection to political groups. City of Mobile, Ala. v. Bolden, supra; Chapman v. Meier, supra; Gaffney v. Cummings, 412 U.S. 735, 93 S.Ct. 2321 (1973); Whitcomb v. Chavis, supra; Reynolds v. Sims, supra.

The Constitution of Maryland

Article III, Section 4 of the Constitution of Maryland reads as follows:

> "Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions."

As previously shown, State action in applying and interpreting the above provisions of the Maryland Constitution is limited, restricted and constrained by the dual Federal constitutional imperatives of (a) "one person - one vote"; and (b) "freedom from invidious discrimination."

So, too, must State action in their application and interpretation be undertaken in the light of other imperatives imposed upon those provisions by Maryland Constitution Article III, Section 2 and 3 that read as follows:

"Section 2.

> The membership of the Senate shall consist of forty-seven (47) Senators. The membership of the House of Delegates shall consist of one hundred forty-one (141) Delegates.

Section 3.

> The State shall be divided by law into legislative districts for the election of members of the Senate and the House of Delegates. Each legislative district shall contain one (1) Senator and three (3) Delegates. Nothing herein shall prohibit the subdivision of any one or more of the legislative districts for the purpose of electing members of the House of Delegates into three (3) single-member delegate districts or one (1) single-member delegate district and one (1) multimember delegate district."

Compactness

The Supreme Court has clearly stated that a State may "legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme." Reynolds v. Sims, supra, 84 S.Ct. at 1390. This Maryland has done in Article III, Section 4 of its Constitution, which provides:

> "Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions."

Although facially the requirement that districts be "compact in form" appears to be a simple one, courts have almost uniformly recognized that the question of whether or not a Legislative District meets the constitutional test of "compactness" can only be answered in the context of the multiplicity of competing demands, some of imperative character, which legislatures must consider in drawing an apportionment plan. So, any decision determining the meaning and effect of "compact" in the constitutional sense must be made in the light of the imperatives imposed by the United States Constitution, and the demands of priority, or limiting factors, imposed by the Maryland Constitution itself.

The paramount constraint under the Constitution of the United States is imposed by the Fourteenth Amendment. Baker v Carr, supra, Reynolds v. Sims, supra, and Mahan v. Howell, supra, made crystal clear that all county, municipal or district lines, all natural or political subdivision boundaries, or the size and shape of any district must yield to the imperative that the State must make a good faith effort to create districts giving credit to the principle of one person - one vote, and must produce clear and convincing proof that any other than a slight population

deviation in its districting is the product of a rational state purpose.

Under the Constitution of Maryland, the General Assembly must consist of 47 Senators and 141 Delegates. Article III, Section 2. In addition, each Senatorial District shall provide one Senator and three Delegates (with an authorized but not compelled division into three single delegate districts or into one single member delegate district and one multimember delegate district. Article III, Section 3.) Finally, Section 4 of Article III requires that "due regard" be given to natural boundaries and the boundaries of political subdivisions. The constraining effect of this language in Section 4 must apply only to the provision of the "be compact in form" requirement of the section. This is so because: (1) the phrase "substantially equal population" constitutionally may be given no less stringent effect than that imposed by Baker v. Carr, supra, and its progeny, and (2) the injunction that a district must "consist of adjoining territory" is one of precise definition as to which the "due regard" phrase is without meaning. Of course, a final constraint is that all districts bordering on the State line must conform thereto.

a. Population Equality as a Constraint on Compactness

The issue of paramount importance in any reapportionment plan is, of course, the achievement of substantial population equality. Thus, in Kirkpatrick v Preisler, 394 U.S. 526, 89 S.Ct. 1225 (1969), the Supreme Court said:

> "Finally, Missouri claims that some of the deviations from equality were a consequence of the legislature's attempt to ensure that each congressional district would be geographically compact. However, in Reynolds v. Sims, supra, at 580, 84 S.Ct. at 1391, we said, 'Modern developments and improvements in transportation and communications make rather hollow, in the mid-1960's, most claims that deviations from population-based representation can validly be based solely on geographical considerations. . . . In any event, Missouri's claim of compactness is based

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> solely upon the unaesthetic appearance of the map of congressional boundaries that would result from an attempt to effect some of the changes in district lines which, according to the lower court, would achieve greater equality. A State's preference for pleasingly shaped districts can hardly justify population variances." (Emphasis added.) 394 U.S. at 535-36; 89 S. Ct. at 1231.

b. Other Constraints on Compactness.

Numerous state courts have also recognized that compactness is a relative concept, to be measured only in the context of the competing demands which make up the "political thicket" of reapportionment. In this regard the Supreme Court of Rhode Island in Opinion to the Governor, 221 A. 2d 799, 101 R.I. 203 (1966), stated at p. 802:

> "The term 'compact' has no precise or exact meaning within the context of the constitutional mandate to divide the state into districts which shall be 'as compact in territory as possible.' County of Norfolk v. City of Portsmouth, 186 Va. 1032, 45 S.E. 2d 136. While a division into tightly packed districts with regular lines might literally satisfy the constitutional requirement, our state with its irregular boundaries, its bays and its inlets, its islands, its rivers and lakes and its many other geographical features is obviously not susceptible to being divided into circular planes or squares. Moreover, the overriding requirement that the districts must be as nearly equal in population as possible would prevent the accomplishment of any such division.
>
> The term 'compact' then, as it is used in the constitution, has reference to a principle, rather than to a definition, and has meaning only within an appropriate factual context. Its origins as a constitutional requirement lie in an intention to provide an electorate with effective representation rather than with a design to establish an orderly and symmetrical geometric pattern of electoral districts."

The Court added, at 803:

> "We are persuaded then that the requirement for territorial compactness...

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> was intended to be peripheral in its thrust and to leave to the legislature the question of determining the territorial structuring that will provide districts as compact as possible. In short, whether there has been a complete departure from the requirement for compactness is a judicial question, but the determination of the territory that necessarily would have to be included in a district to provide that that district be as compact as possible is for legislative determination. In People ex rel. Woodyatt v. Thompson, 155 Ill. 451, at page 480, 40 N.E. 307, at page 315, the court noted: 'There is a vast difference between determining whether the principle of compactness of territory has been applied at all or not, and whether or not the nearest practical approximation to perfect compactness has been attained. The first is a question which the courts may finally determine; the latter is for the legislature.'"

Similarly, the New Jersey Supreme Court has held that:

> "Compactness is an elusive concept. We noted in Scrimminger v. Sherwin, supra, 60 N.J. at 498, 291 A.2d 134, that it may be of limited utility in creating legislative districts in the light of the odd configurations of our State and its municipalities. It has never been held to constitute an independent federal constitutional requirement for State legislative districts. Gaffney v. Cummings, supra, 412 U.S. at 752, 93 S.Ct. at 2331, 37 L.Ed.2d at 312, footnote 18. This Court has suggested that population equality is distinctly paramount to it and that where districts are created on the basis of existing political subdivisions, compactness becomes a much reduced factor. Jackman v. Bodine, 43 N.J. 406, 419, 231 A.2d 193 (1967)." Davenport v. Apportionment Commission, 319 A.2d 718, 722, (65 N.J. 125 (1973). [11]

In yet a third major decision, Schneider v. Rockefeller, 340 N.Y.S.2d 889, 31 N.Y.2d 420, 293 N.E.2d 67 (1972), the New York Court of Appeals discussed at some length the competing considerations

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11. Article IV, § 2, ¶ 3 of the New Jersey Constitution provides that Assembly districts shall be "as nearly compact...as possible."

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which legitimately may impinge on compactness in legislative districts:

> "The term compact,...has no precise meaning within the context of the constitutional mandate. Moreover, the Constitution does not provide unqualifiedly for compactness. (Matter of Sherrill v. O'Brien, supra.) At a minimum the Legislature may, in good faith, take account of existing political subdivision lines, topography, means of transportation and lines of communication without violating this standard. (Matter of Sherill v. O'Brien, supra.) Particularly where cities are concerned, the requirement of practical numerical equality may necessitate boundaries that are ragged at best. Moreover, it is manifest that our State, with its irregular boundaries, its islands, rivers, lakes and other geographical features is not susceptible of division into circular planes or squares. Thus, it might be said that the constitutional requirement of compactness is peripheral in its thrust, forbidding a complete departure, yet leaving to the determination and discretion of the Legislature the degree of compactness which is possible in the total representation picture." 340 NYS2d at 896.

These same concerns were recognized by the Supreme Court of Pennsylvania in Commonwealth ex rel. Specter v. Levin, 448 Pa. 1, 293 A.2d 15 (1972), where the Court cautioned:

> "Before any apportionment plan can be attacked for lack of compactness it must be recognized that there is a certain degree of unavoidable non-compactness in any apportionment scheme. The population density of this state is quite uneven, and therefore attempts to achieve the overriding objective of substantial equality of population will ordinarily necessitate the drawing of districts that are not models of geometric compactness. In addition, attempts to maintain the integrity of the boundaries of political subdivisions will add another increment of unavoidable non-compactness. Thus, in the words of one commentator: 'Dragons, bacon strips, dumbbells, and other strained shapes are not always reliable signs that partisan (or racial or ethnic or factional) interests are being served....' (footnote omitted.)
> at 23.

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Two cases present seemingly contrary authority. See In re Legislative Districting of General Assembly, 193 N.W.2d 784, 790-91 (Iowa, 1972); Acker v. Love, 496 P.2d 75 (Colo., 1972). The Master is convinced, however, that these cases are readily distinguishable.

In short, the constitutional requirement for compactness should be considered in the light of what must be its principal purposes - the assurance of mutually reasonable access between citizens and their representatives for exchange of views and the prevention of discriminatory districting.

The use of mathematical measures of compactness that relate solely to geographic configurations do nothing to achieve either such purpose and no court has adopted them. As is pointed out in the Affidavit of Professor H. Payton Young (Exhibit 2A) these mathematical tests give excellent grades to some very strange configurations.

The latest final State decision upon the constitutionality of State legislative redistricting is: In re Reapportionment Plan for the Pennsylvania General Assembly, 442 A.2d 661 (S.Ct. Pa. Dec. 29, 1981).

The decision is in full accord with the cases previously cited and quoted herein. The Court, after quoting from Lucas v. Colorado, supra, that "in determining whether a good faith effort to establish districts substantially equal in population has been made, a court must necessarily consider a State's legislative apportionment scheme as a whole," stated at 668:

> "None of the arguments presented by appellants convinces us that the drawing of district lines, which necessarily involves value judgments by the Commission, has been based upon impermissible

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considerations. Mere dissatisfaction with the fact that certain political subdivisions have been divided or have been included within particular legislative districts is not sufficient to invalidate the Final Reapportionment Plan as unconstitutional. Moreover, the Supreme Court of the United States has made clear that 'neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation.' Reynolds v. Sims, 377 U.S. at 579-80, 84 S.Ct. at 1391 (1964)."

See also Schrage v. State Board, 430 N.E.2d 483 (Ill. 1981).

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MISCELLANEOUS PETITION 4

PETITIONER, RICHARD L. ANDREWS
BALTIMORE CITY

Petitioner Andrews presents three specific challenges to HJR 32 (the Plan), Legislative Districts 39 through 47. His petition alleges that 1) proposed Legislative Districts 42 and 44 do not meet the requirement of "compactness" under Article III, Sec. 4, Constitution of Maryland; 2) that the Plan, by establishing multimember at-large legislative districts, diminishes the proportion of representation of Blacks; and 3) that the Plan was "intentionally designed to eliminate any representation of Republicans" through the use of multimember at-large legislative districts.

A. Compactness

The compactness challenge was answered, supra, and will not be discussed separately here, beyond noting that the Master agrees that proposed Legislative District 44 does not satisfy the requirement for compactness found in Article III, Sec. 4, Constitution of Maryland. (See discussion under Miscellaneous Petition 9, infra.)

B. Dilution of Minority Voting Strength

Petitioner alleges that the establishment of multimember at-large legislative districts under the Governor's Plan would "effectively guarantee that 15 of the 27 Delegates elected from Baltimore

City would be White, as 4 of the 9 districts are overwhelmingly White in population, and one other is balanced in population, but has an effective large White voting majority. Miscellaneous Petition 4, Paragraph 3.

However, in its most recent pronouncement on the issue of dilution of minority voting strength in at-large electoral systems, the Supreme Court said in City of Mobile, Ala. v. Bolden, 446 U.S. 55, 100 S.Ct. 1490, 1499 (1980):

> We have recognized that such legislative apportionments could violate the Fourteenth Amendment if their purpose were invidiously to minimize or cancel out the voting potential of racial or ethnic minorities. See White v. Regester, supra; Whitcomb v. Chavis, supra; Burns v. Richardson, supra, Fortson v. Dorsey, supra. To prove such a purpose it is not enough to show that the group allegedly discriminated against has not elected representatives in proportion to its numbers. White v. Regester, supra, 412 U.S., at 765-766, 93 S.Ct. at 2339. Whitcomb v. Chavis, supra, 403 U.S. at 149-150, 91 S.Ct. at 1872. A plaintiff must prove that the disputed plan was "conceived or operated as (a) purposeful device(s) to further racial discrimination". id., at 149, 91 S.Ct. at 1872.

The Petitioner has not met this burden.

C. Political Gerrymandering

Petitioner's final contention is that the Governor's Plan violates the Equal Protection Clause of the Fourteenth Amendment by "designedly" discriminating against members of the Republican Party.

On the issue of partisan gerrymandering, the Supreme Court has stated that:

> It might well be that, designedly or otherwise a multimember constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. When this is demonstrated it will be time enough to consider whether the system still passes constitutional muster. Fortson v. Dorsey, 379, U.S. 433, 439, 85 S.Ct. 498, 501 (1965)

I think it has not been demonstrated here. Dismissal of Miscellaneous Petition 4 is recommended.

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MISCELLANEOUS PETITION 2

PETITIONER, JOSEPH T. LANDERS, III et als
DISTRICTS 43 and 44

Under the Legislative Plan for Baltimore City has been divided into 9 Districts of substantially equal population. This Petition is directed against Districts 43 and 44.

It is uncontradicted in the record that the Legislative Plan intentionally districted Baltimore City in a manner that reasonably assures 4 White and 4 Black majority districts - with District 44 being the "swing district" of about equal population, the control of which probably would produce control of the Baltimore City Delegations in the Senate and House.

I believe that District 44 is unconstitutional under the provisions of Article III, Section 4 of the Constitution of Maryland.

In District 44, precincts 39 and 40 of the 27th Ward were excluded from "swing district" 44 and placed in District 43 (80% White - 20% Black). The exclusion of those two precincts did two things: (1) It excluded Morgan State University and its environs, the center of the Black cultural community, from the "swing" district and placed it in a White district; (2) It excluded an incumbent from the area wherein a majority of his present constituency reside and placed him in a district containing a substantially new constituency (District 43).

That the term "compact" as used in the Constitution has reference to a principle, rather than a definition and, thus, the manner of its application is for legislative - not judicial - decision clearly applies when a constructed district is not discriminatory. This is not to say that the principle is beyond judicial reach when a district is constructed in discriminatory fashion.

It is one thing to say that incumbency considerations do not per se constitute discrimination and quite another to say that incumbency considerations, coupled with discriminatory factors, will survive scrutiny as to the form of a district.

The exclusions recited above from District 44 were accomplished by cutting a wide swath from the northern outline of the District and by adding a boot-like appendage to its southeast corner.

The impropriety of the separation of the environs of Morgan State University from the "swing district" of Baltimore City was clearly made known to the districting authorities. (See Minutes, Exhibits 1-D-B and 1-D-C.

A quite simple alteration of Districts 43 and 44 corrects the Constitutional deficit of District 44, by moving precincts 36, 37 and 46 of the 27th Ward from District 44 to District 43, and

compensating for the loss of that population by adding precincts 39, 40, 58, 63 and 64 of the 27th Ward from District 43 to District 44.

The recommended change eliminates the discrimination; produces improved configuration of both Districts; and promotes a better racial equality in the "swing district" demonstrated by the computer printout of "before and "after" population figures of Districts 43 and 44 and by computer drawn "before" and "after" plats, all attached hereto marked appendix [22]

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22. : Computer printout of population figures before and after change and computer drawn plats before and after change, all attached hereto marked Appendix C. Appendix is in original only.

Summary

I am persuaded that the Legislative Plan for the Redistricting of the State viewed as an entirety represents a good faith effort on the part of the State to meet all constitutional demands.

Some of the petitioners are requesting the Court of Appeals to do that which no Court in the United States has done - to bind itself to a suggested numbers game, a game using numbers that admittedly are arbitrary and with not the slightest assurance that their use will produce fair representation, or freedom from invidious discrimination.

In the course of final argument, counsel for several petitioners spoke glibly about gerrymandering --waving cut-outs of allegedly gerrymandered districts, yet with one exception[23], none was able to point to a single instance of discriminatory districting in the legislative plan.

Perhaps the most objective of all discussants of the theory and practice of fair representation and reapportionment, following Baker v. Carr, the late Professor Robert G. Dixon, exposed the invalidity of exalting form over substance when he wrote:

> "... all are familiar with the practice of devising odd-shaped districts for political advantage - which is the historically derived and common popular usage of the term gerrymandering. Cartoonists, especially, have a field day in making 'snakes,' 'turkat feats,' 'frying pans,' and the like, emerge from sets of revised districts. 'Checker-board square' is the assumed ideal. Any significant deviations from such symmetry are deemed unclean and unjustifiable.
>
> It may come as a surprise, therefore, to be told that this common understanding is highly unfortunate. It is unfortunate because it tends to preclude intelligent discussion of unfair partisan practices and results, in districting. It immediately casts attention in the wrong direction -

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23/ District 44, discussed, supra.

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toward superficialities of shape and size, rather than toward the political realities of district composition. These realities, as Robert Luce has so aptly observed, turn on the 'accident of sleeping place.' It is the particular nature of this 'accident of sleeping place' for a party's supporters which determines whether a set of symmetrical districts is fair, or is a clean-sweep gerrymander for that party. Not to perceive this is to confuse form with function, and even to prevent the asymmetrical designs dictated by considerations of political balance and minority representation, and dictated as well by normal preferences for giving some recognition to natural boundaries and political subdivisions." [24]

He added:

"Gerrymandering is discriminatory districting. It equally covers squiggles, multimember districting, or simple connection, when the result is racial or political misrepresentation." [25]

The legislative plan plainly is within the constitutional limits of population equality imposed by Baker v. Carr and its progency; with a single exception is free of any invidious discrimination either political or racial; and is composed of districts meeting all requirements of the Maryland Constitution when they are viewed in the light of (a) the geographical irregularities of the State and its political subdivisions; (b) the uneven population distribution in the State, and (c) the necessity to balance the sometime conflicting, competing or incompatible equities arising under Sections 1, 2 and 3 of Article III of the Constitution of Maryland.

Accordingly, it is recommended that the legislative plan be approved in all respects save District 44 (and by necessity 43) as to which the changes indicated by Appendix A are recommended.

I believe that any other course would prove chaotic.

Respectfully submitted,

W. Albert Menchine

W. Albert Menchine
Special Master

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24: Democratic Representation, Oxford University Press, 1968, p. 459

IN THE MATTER		IN THE
OF THE		COURT OF APPEALS
LEGISLATIVE DISTRICTING		OF MARYLAND
OF THE STATE		
1992		

ERRATA SHEET MASTERS REPORT

On page 31 line 6, change "District 13" to "District 15"

On page 36 line 3 after the words "20th Ward from" add the words "District 41 to"

On page 45 Line 25 change Appendix "A" to "Appendix C"

Please conform your copy

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IN THE MATTER OF THE	*	In the
	*	
LEGISLATIVE DISTRICTING	*	Court of Appeals
	*	
OF THE STATE	*	of Maryland
	*	
	*	

2nd ERRATA SHEET to MASTER'S REPORT:

On page 38, last line change "27th" Ward to "26th" Ward

May 13, 1982

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FILED -
AUG: 27, 1982
(confirmed by telephone)

In the Matter of Legislative Districting of the State	*	IN THE
	*	COURT OF APPEALS
Richard L. Andrews, Petitioner	*	OF MARYLAND
v.	*	Misc. No. 4
Governor of Maryland, Respondent	*	September Term, 1982
	*	

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Richard L. Andrews, the appellant above named, hereby appeals to the Supreme Court of the United States from the final Order of the Court of Appeals of Maryland dismissing Petitioner's action, entered in this action on June 4, 1982.

This appeal is taken pursuant to Title 28, U.S. Code, Section 1257(2).

Dated 8/26/82

Richard L. Andrews
5508 Woodmont Ave.
Baltimore, Md. 21239
433-6545; 828-9429

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U.S. Constitution

[AMENDMENT XIII]

Section 1.

[*Abolition of Slavery*]

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2.

[*Power to Enforce This Article*]

Congress shall have power to enforce this article by appropriate legislation.[18]

[AMENDMENT XIV]

Section 1.

[*Citizenship Rights Not to Be Abridged by States*]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

[*Apportionment of Representatives in Congress*]

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

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18. Proposed by Congress on January 31, 1865, and declared ratified on December 18, 1865.

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Md Constitution

plan setting forth the boundaries of the legislative districts for the election of members of the Senate and the House of Delegates, which plan shall conform to Sections 2, 3 and 4 of this Article. If a plan has been adopted by the General Assembly by the 45th day after the opening of the regular session of the General Assembly in the second year following every census, the plan adopted by the General Assembly shall become law. If no plan has been adopted by the General Assembly for these purposes by the 45th day after the opening of the regular session of the General Assembly in the second year following every census, the Governor's plan presented to the General Assembly shall become law.

Upon petition of any registered voter, the Court of Appeals shall have original jurisdiction to review the legislative districting of the State and may grant appropriate relief, if it finds that the districting of the State is not consistent with requirements of either the Constitution of the United States of America, or the Constitution of Maryland. (1948, ch. 226, ratified Nov. 7, 1950; 1956, ch. 99, ratified Nov. 6, 1956; 1969, ch. 785, ratified Nov. 3, 1970; 1972, ch. 363, ratified Nov. 7, 1972; 1977, ch. 681, ratified Nov. 7, 1978.)

Cross reference. — As to Legislative Districting Plan of 1972, see article 40, § 48 et seq. of the Code.

Editor's note. — Acts 1972, ch. 362, withdrew and repealed ch. 356, Acts 1971, which had proposed an amendment to this section.

Maryland Law Review. — For article discussing the history of Maryland legislative apportionment, see 25 Md. L. Rev. 1 (1965).

University of Baltimore Law Review. — For article, "State Constitutional Law for Maryland Lawyers: Individual Civil Rights," see 7 U. Balt. L. Rev. 299 (1978).

Duty of court to determine validity of section. — It is the duty of the court to determine the question whether this section or § 2 of this article, or both, in view of the present distribution of population in Maryland, constitute an unreasonable, discriminatory dilution of rights of suffrage in violation of the equal protection clause of the Fourteenth Amendment of the federal Constitution. The question is not a political one. Maryland Comm. for Fair Representation v. Tawes, 229 Md. 412, 180 A.2d 656 (1962).

It is not possible or advisable to state a precise, inflexible and irreconcilable formula for constitutional representation in the General Assembly. The determination in each case must depend upon the facts existent at the time it is decided. Maryland Comm. for Fair Representation v. Tawes, 229 Md. 412, 180 A.2d 656 (1962).

This section provides for the manner of establishing plans for the legislative districts of the State. State Administrative Bd. of Election Laws v. Calvert, 272 Md. 656, 327 A.2d 260 (1974), cert. denied, 419 U.S. 1110, 95 S. Ct. 784, 42 L. Ed. 2d 807 (1975).

Satisfaction of equal protection clause. — It is the distribution of representatives rather than the method of distributing them that must satisfy the demands of the equal protection clause of the federal Constitution. State Administrative Bd. of Election Laws v. Calvert, 272 Md. 656, 327 A.2d 260 (1974), cert. denied, 419 U.S. 1110, 95 S. Ct. 784, 42 L. Ed. 2d 807 (1975).

Representation need not be based on mathematical ratio of population. — In Maryland, there is no requirement, constitutional or otherwise, that representation in the General Assembly be based upon a mathematical ratio of population, or of eligible voters, and the Court of Appeals does not intimate that such a ratio is necessary to meet constitutional requirements. Maryland Comm. for Fair Representation v. Tawes, 229 Md. 412, 180 A.2d 656 (1962).

History and geography may be considered. — History has been recognized as a pertinent consideration in the making of a constitutional determination; and geography has also been recognized as worthy of some consideration through the protection which it may afford to some segments of the population in matters of electoral concern. Maryland Comm. for Fair Representation v. Tawes, 229 Md. 412, 180 A.2d 656 (1962).

Section reflects State policy. — This section, although not applicable to municipal legislative bodies, reflects a State policy that any registered voter has a sufficient interest in the apportionment of electoral districts to challenge the constitutionality of a reapportionment scheme. DuBois v. City of College Park, 280 Md. 325, 373 A.2d 1009 (1977).

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HOUSE JOINT RESOLUTION No. 32

21r2009 21

By: Delegate Rose
Introduced and read first time: February 2, 1982
Assigned to: Constitutional and Administrative Law

Committee Report: Favorable
House action: Adopted
Read second time: February 5, 1982

RESOLUTION NO. _____

HOUSE JOINT RESOLUTION

A House Joint Resolution concerning

Legislative Districting Plan of 1982

FOR the purpose of incorporating certain technical changes into the plan for legislative districting presented by the Governor pursuant to Article III, Section 5, of the Constitution of Maryland; providing that such changes are intended to remove certain ambiguities and to implement the intent underlying the Governor's plan; making an internal change within a legislative district to improve, in a Delegate district, access originally inadvertantly limited by an unbridged body of water; providing that this Joint Resolution shall be effective as a plan within the meaning of Article III, Section 5, of the Constitution of Maryland only under certain circumstances; providing that this Joint Resolution does not preclude the enactment by the General Assembly of a subsequent Joint Resolution setting forth the boundaries of legislative districts; and generally relating to the establishment of legislative districts pursuant to Article III of the Constitution of Maryland.

BY repealing

Article 40 - General Assembly
Section 46, 47, 47 1/2, 47A, 47B, and 47C
Annotated Code of Maryland
(1978 Replacement Volume and 1981 Supplement)

BY adding to

EXPLANATION:
Underlining indicates amendments to bill.
Strike-out indicates matter stricken by amendment.

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Article 40 - General Assembly
Section 46, 47, 47A, 47B, and 47C to be under the amended subtitle "Legislative Districting Plan of 1982"
Annotated Code of Maryland
(1978 Replacement Volume and 1981 Supplement)

SECTION 1. BE IT RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 46, 47, 47 1/2, 47A, 47B, and 47C, inclusive, of Article 40 - General Assembly, of the Annotated Code of Maryland be repealed.

SECTION 2. AND BE IT FURTHER RESOLVED, That section(s) of the Annotated Code of Maryland read(s) as follows:

Article 40 - General Assembly

Legislative Districting Plan of [1973] 1982

46.

(A) THE STATE OF MARYLAND IS DIVIDED INTO 47 DISTRICTS FOR THE ELECTION OF MEMBERS OF THE GENERAL ASSEMBLY OF MARYLAND.

(B) EACH LEGISLATIVE DISTRICT SHALL ELECT 1 SENATOR AND 3 DELEGATES.

(C) EACH LEGISLATIVE DISTRICT MAY BE SUBDIVIDED INTO 3 SINGLE MEMBER DELEGATE DISTRICTS OR INTO 1 SINGLE MEMBER DELEGATE DISTRICT AND 1 MULTIMEMBER DELEGATE DISTRICT.

(D) IN ANY LEGISLATIVE DISTRICT WHICH CONTAINS MORE THAN 2 COUNTIES OR PARTS OF MORE THAN 2 COUNTIES, AND WHERE DELEGATES ARE TO BE ELECTED AT LARGE BY THE VOTERS OF THE ENTIRE DISTRICT, A COUNTY, OR PART OF A COUNTY, MAY NOT HAVE MORE THAN 1 DELEGATE RESIDING IN THAT DISTRICT.

(E) THE DESCRIPTIONS OF THE LEGISLATIVE DISTRICTS SET FORTH IN THIS SUBTITLE, INCLUDING ALL REFERENCES TO ELECTION DISTRICTS, WARDS, PRECINCTS, STREETS, HIGHWAYS, AND OTHER DESIGNATIONS, ARE TO THE GEOGRAPHICAL BOUNDARIES OR OTHER DESIGNATIONS AS THEY EXISTED ON JUNE 1, 1981.

47.

THE COMPOSITION OF THE 47 LEGISLATIVE DISTRICTS IS:

(1) LEGISLATIVE DISTRICT 1 CONSISTS OF:

(A) DELEGATE DISTRICT 1A (SINGLE MEMBER DELEGATE DISTRICT):

(I) GARRETT COUNTY IN ITS ENTIRETY; AND

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(F) WICOMICO COUNTY ELECTION DISTRICT 9, THAT PART OF PRECINCT 3 THAT IS WITHIN THE MUNICIPAL BOUNDARIES OF THE MUNICIPAL CORPORATION OF SALISBURY.

(39) LEGISLATIVE DISTRICT 39 CONSISTS OF:

(A) BALTIMORE CITY WARDS 4, 17, 18, AND 22 IN THEIR ENTIRETY;

(B) BALTIMORE CITY WARD 3, PRECINCT 2;

(C) BALTIMORE CITY WARD 3, THAT PART OF PRECINCT 1 THAT IS NORTH OF A LINE RUNNING ALONG THE CENTER OF BANK STREET FROM CENTRAL AVENUE TO BROADWAY;

(D) BALTIMORE CITY WARD 5, THAT PART OF PRECINCT 1 THAT IS WEST OF A LINE RUNNING ALONG THE CENTER OF CENTRAL AVENUE FROM ORLEANS STREET TO FAYETTE STREET;

(E) BALTIMORE CITY WARD 5, THAT PART OF PRECINCT 2 THAT IS WEST OF A LINE RUNNING ALONG THE CENTER OF AISQUITH STREET FROM MONUMENT STREET TO ORLEANS STREET;

(F) BALTIMORE CITY WARD 10, PRECINCTS 3 AND 4;

(G) BALTIMORE CITY WARD 11, PRECINCTS 1, 2, AND 4 THROUGH 9, INCLUSIVE;

(H) BALTIMORE CITY WARD 14, PRECINCTS 3 THROUGH 11, INCLUSIVE;

(I) BALTIMORE CITY WARD 15, PRECINCTS 25, 26, 29, AND 30;

(J) BALTIMORE CITY WARD 16, PRECINCTS 1 THROUGH 4, INCLUSIVE;

(K) BALTIMORE CITY WARD 19, PRECINCTS 1 AND 2;

(L) BALTIMORE CITY WARD 20, PRECINCTS 1, 2, 3, AND 22 THROUGH 25, INCLUSIVE; AND

(M) BALTIMORE CITY WARD 21, THAT PART OF PRECINCT 1 THAT LIES NORTH AND EAST OF A LINE THAT RUNS ALONG THE CENTER OF HARBOR CITY BOULEVARD FROM EUTAW STREET TO PRATT STREET.

(40) LEGISLATIVE DISTRICT 40 CONSISTS OF:

(A) BALTIMORE CITY WARD 12, PRECINCTS 5 AND 7;

(B) BALTIMORE CITY WARD 13, PRECINCTS 6 THROUGH 10, INCLUSIVE;

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(C) BALTIMORE CITY WARD 15, PRECINCTS 10, 17 THROUGH 24, INCLUSIVE, 26, 27, 31 THROUGH 42, INCLUSIVE, 44, AND 45;

(D) BALTIMORE CITY WARD 16, PRECINCTS 6 AND 7;

(E) BALTIMORE CITY WARD 16, THAT PART OF PRECINCT 8 THAT IS NORTH OF A LINE RUNNING ALONG THE CENTER OF LANVALE STREET FROM WHITMORE AVENUE TO BENTALOU STREET, THENCE CONTINUING IN AN EASTERLY DIRECTION TO SPEDDEN STREET; AND

(F) BALTIMORE CITY WARD 27, PRECINCTS 92 THROUGH 99, INCLUSIVE.

(41) LEGISLATIVE DISTRICT 41 CONSISTS OF:

(A) BALTIMORE CITY WARD 15, PRECINCTS 1 THROUGH 9, INCLUSIVE, 11 THROUGH 16, INCLUSIVE, AND 43;

(B) BALTIMORE CITY WARD 16, PRECINCTS 8 THROUGH 12, INCLUSIVE;

(C) BALTIMORE CITY WARD 16, THAT PART OF PRECINCT 8 THAT IS SOUTH OF A LINE RUNNING ALONG THE CENTER OF LANVALE STREET FROM WHITMORE AVENUE TO BENTALOU STREET, THENCE CONTINUING IN AN EASTERLY DIRECTION TO SPEDDEN STREET;

(D) BALTIMORE CITY WARD 20, PRECINCTS 4 THROUGH 10, INCLUSIVE, AND 21;

(E) BALTIMORE CITY WARD 28, PRECINCTS 4, 5, 6, 10, 11, AND 17; AND

(F) BALTIMORE CITY WARD 26, THAT PART OF PRECINCT 12 THAT IS EAST OF A LINE BEGINNING AT THE WESTERNMOST END OF THE ODD SIDE OF THE 4900 BLOCK OF WEST FOREST PARK AVENUE AND PROCEEDING IN A SOUTHERLY DIRECTION TO THE INTERSECTION WITH GWYNNS FALLS.

(42) LEGISLATIVE DISTRICT 42 CONSISTS OF:

(A) BALTIMORE CITY WARD 13, PRECINCTS 2, 3, 4, 5, AND 29 THROUGH 35, INCLUSIVE;

(B) BALTIMORE CITY WARD 27, PRECINCTS 78 THROUGH 91, INCLUSIVE, AND 100 THROUGH 108, INCLUSIVE;

(C) BALTIMORE CITY WARD 28, PRECINCTS 1, 2, 3, 7, 8, 9, 12, 14, 15, 16, 18, 19, AND 20; AND

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(D) BALTIMORE CITY WARD 28, THAT PART OF PRECINCT 12 THAT IS WEST OF A LINE BEGINNING AT THE WESTERNMOST END OF THE ODD SIDE OF THE 4900 BLOCK OF WEST FOREST PARK AVENUE AND PROCEEDING IN A SOUTHERLY DIRECTION TO THE INTERSECTION WITH GWYNNS FALLS.

(43) LEGISLATIVE DISTRICT 43 CONSISTS OF:

(A) BALTIMORE CITY WARD 26, PRECINCTS 38 THROUGH 45, INCLUSIVE; AND

(B) BALTIMORE CITY WARD 27, PRECINCTS 8 THROUGH 60, INCLUSIVE, AND 58 THROUGH 77, INCLUSIVE.

(44) LEGISLATIVE DISTRICT 44 CONSISTS OF:

(A) BALTIMORE CITY WARD 8, PRECINCTS 1 AND 2;

(B) BALTIMORE CITY WARD 9, PRECINCTS 1 THROUGH 7, INCLUSIVE;

(C) BALTIMORE CITY WARD 11, PRECINCT 3;

(D) BALTIMORE CITY WARD 12, PRECINCTS 1 THROUGH 4, INCLUSIVE, 6, AND 8 THROUGH 24, INCLUSIVE;

(E) BALTIMORE CITY WARD 13, PRECINCT 1;

(F) BALTIMORE CITY WARD 14, PRECINCTS 1, 2, AND 12;

(G) BALTIMORE CITY WARD 25, PRECINCTS 34 THROUGH 37, INCLUSIVE, AND PRECINCT 46; AND

(H) BALTIMORE CITY WARD 27, PRECINCTS 2 THROUGH 7, INCLUSIVE, 61 THROUGH 57, INCLUSIVE.

(45) LEGISLATIVE DISTRICT 45 CONSISTS OF:

(A) BALTIMORE CITY WARD 5, THAT PART OF PRECINCT 1 THAT IS EAST OF A LINE RUNNING ALONG THE CENTER OF CENTRAL AVENUE FROM ORLEANS STREET TO FAYETTE STREET;

(B) BALTIMORE CITY WARD 5, THAT PART OF PRECINCT 2 THAT IS EAST OF A LINE RUNNING ALONG THE CENTER OF AISQUITH STREET FROM MONUMENT STREET TO ORLEANS STREET;

(C) BALTIMORE CITY WARD 6, PRECINCTS 2 THROUGH 8, INCLUSIVE;

(D) BALTIMORE CITY WARD 7, PRECINCTS 1 THROUGH 7, INCLUSIVE;

(E) BALTIMORE CITY WARD 8, PRECINCTS 3 THROUGH 13, INCLUSIVE;

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(F) BALTIMORE CITY WARD 9, PRECINCTS 8 THROUGH 17, INCLUSIVE; AND

(G) BALTIMORE CITY WARD 10, PRECINCTS 1 AND 2.

(46) LEGISLATIVE DISTRICT 46 CONSISTS OF:

(A) BALTIMORE CITY WARDS 1 AND 2 IN THEIR ENTIRETY;

(B) BALTIMORE CITY WARD 3, PRECINCT 3;

(C) BALTIMORE CITY WARD 5, THAT PART OF PRECINCT 1 THAT IS SOUTH OF A LINE RUNNING ALONG THE CENTER OF BANK STREET FROM CENTRAL AVENUE TO BROADWAY;

(D) BALTIMORE CITY WARD 6, PRECINCTS 1, 6, AND 7;

(E) BALTIMORE CITY WARD 7, PRECINCTS 8 AND 9; AND

(F) BALTIMORE CITY WARD 24, PRECINCTS 1 THROUGH 33, INCLUSIVE, AND 47 THROUGH 51, INCLUSIVE.

(47) LEGISLATIVE DISTRICT 47 CONSISTS OF:

(A) BALTIMORE CITY WARDS 23, 24, AND 25 IN THEIR ENTIRETY;

(B) BALTIMORE CITY WARD 19, PRECINCTS 3, 4, AND 5;

(C) BALTIMORE CITY WARD 20, PRECINCTS 19 AND 20;

(D) BALTIMORE CITY WARD 21, PRECINCTS 2 AND 3; AND

(E) BALTIMORE CITY WARD 21, THAT PART OF PRECINCT 1 THAT LIES SOUTH AND WEST OF A LINE THAT RUNS ALONG THE CENTER OF HARBOR CITY BOULEVARD FROM ELTHAM STREET TO PRATT STREET.

67A.

FOR PURPOSES OF ELECTIONS, THE PROVISIONS OF THIS SUBTITLE SHALL BE APPLICABLE TO ELECTIONS FOR MEMBERS OF THE GENERAL ASSEMBLY BEGINNING WITH THE PRIMARY AND GENERAL ELECTIONS OF 1982 AND, FOR PURPOSES OF REPRESENTATION, SHALL BE APPLICABLE BEGINNING WITH THE SECOND WEDNESDAY OF JANUARY, 1983.

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67B.

ALL PROVISIONS OF THIS ARTICLE, AND ALL OTHER LAWS OR PARTS OF LAWS, PUBLIC GENERAL OR PUBLIC LOCAL, INCONSISTENT WITH THE PROVISIONS OF THIS SUBTITLE, ARE REPEALED TO THE EXTENT OF ANY SUCH INCONSISTENCY.

67C.

IF ANY PART OF THIS SUBTITLE, INCLUDING ANY SECTION OR SUBSECTION OR PORTION OF IT, SHALL BE HELD TO BE UNCONSTITUTIONAL OR INVALID FOR ANY REASON, THE UNCONSTITUTIONALITY OR INVALIDITY MAY NOT AFFECT THE REMAINING PARTS OF THIS SUBTITLE. IT IS THE INTENTION THAT THE REMAINING PARTS OF THIS SUBTITLE WOULD HAVE BEEN ENACTED INTO LAW IF THAT UNCONSTITUTIONALITY OR INVALIDITY HAD BEEN KNOWN. TO THIS END, ALL PARTS OF THIS SUBTITLE ARE DECLARED TO BE SEVERABLE.

SECTION 3. AND BE IT FURTHER RESOLVED, That this Joint Resolution is intended to remove ambiguities from, and implement the underlying intent of, the plan for legislative districting presented by the Governor pursuant to Article III, Section 5, of the Constitution of Maryland and to make an internal change within a legislative district to improve, in a Delegate district, access originally inadvertently limited by an unbridged body of water.

SECTION 4. AND BE IT FURTHER RESOLVED, That this Joint Resolution shall not be construed to preclude the adoption of any other plan setting forth the boundaries for legislative districts pursuant to the provisions of the fourth and fifth sentences of Article III, Section 5, of the Constitution of Maryland and shall be effective as a plan within the meaning of those provisions only if no other plan is adopted by the General Assembly pursuant to those provisions by the 45th day of the 1982 regular Session.

Approved:

_____
Governor.

_____
Speaker of the House of Delegates.

_____
President of the Senate.

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cans of Alaskan Natives and American Indians, if the predominate language is historically unwritten".

42 USC 1973aa-1a. (d) Section 203(c) of such Act is amended by inserting after "Native" in the proviso the following: "and American Indians".

42 USC 1973. Sec. 2. Section 2 of the Voting Rights Act of 1965 is amended to read as follows:

"Sec. 2. (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).

42 USC 1973b. "(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population."

42 USC 1973aa-1a. Sec. 4. Section 203(b) of the Voting Rights Act of 1965 is amended by striking out "August 6, 1965" and inserting in lieu thereof "August 6, 1992", and the extension made by this section shall apply only to determinations made by the Director of the Census under clause (1) of section 203(b) for members of a single language minority who do not speak or understand English adequately enough to participate in the electoral process when such a determination can be made by the Director of the Census based on the 1990 and subsequent census data.

42 USC 1973aa-1a note. Sec. 5. Effective January 1, 1994, title II of the Voting Rights Act of 1965 is amended by adding at the end the following section:

A-42

"Sec. 208. Any voter w
blindness, disability, or
assistance by a person o
employer or agent of that
union."

Sec. 6. Except as other
made by this Act shall t
this Act.

Approved June 29, 198

LEGISLATIVE HISTORY—H
HOUSE REPORTS: No. 97-
SENATE REPORT: No. 97-4
CONGRESSIONAL RECORD
Vol. 127 (1981): Oct.
Vol. 128 (1982): June
June
198
June
WEEKLY COMPILATION O
June 29, 1982, Presid

Best Copy Available

Office - Supreme Court, U.S.
FILED
SEP 20 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-5360

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

IN THE MATTER OF LEGISLATIVE
DISTRICTING OF THE STATE

RICHARD L. ANDREWS,

Appellant,

v.

GOVERNOR OF MARYLAND,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS OR AFFIRM

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DIANA G. MOTZ,
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Question Presented

Does a legislative reapportionment plan invidiously discriminate against Blacks or Republicans simply because it creates some multimember districts?

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No. 82-5360

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

In The Matter Of Legislative
Districting Of The State

RICHARD L. ANDREWS,

Appellant

v.

GOVERNOR OF MARYLAND,

Appellee

MOTION TO DISMISS OR AFFIRM

The State, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, moves the Court to dismiss the appeal herein, or, in the alternative, to affirm the judgment of the Court of Appeals of Maryland on the ground that the question presented is too insubstantial to merit further argument.

OPINIONS BELOW

The unreported Per Curiam Order of the Court of Appeals of Maryland dated June 4, 1982, and the unreported Report of the Special Master appointed by the Court of Appeals of Maryland dated May 12, 1982, is printed in the Appendix of Andrews' Jurisdictional Statement at A-1 to A-2 and A-3 to A-31, respectively. As this is an original proceeding in the Court of Appeals of Maryland, there are no further opinions or orders.

JURSIDICTION

Andrews erroneously asserts that the jurisdiction of this Court is invoked under 28 U.S.C. §1257(2). It is the position of the State that jurisdiction only arises pursuant to 28 U.S.C. §1257(3) and that review is by way of certiorari. Therefore, the State requests this Court to treat this appeal as a petition for writ of certiorari pursuant to 28 U.S.C. §2103, and to treat this Motion as a Brief in Opposition.

LAW INVOLVED

Section 1 of the Fourteenth Amendment to the Constitution of the United States is printed in Appendix A of this Motion. Sections 1 through 5 of Article III of the Maryland Constitution are printed in Appendix A of this Motion. The portions of the Legislative District Plan for the State of Maryland directly at issue here are printed in the Appendix of Andrews' Jurisdictional Statement at A-35 to A-41.

STATEMENT OF THE CASE

Under the terms of Article III, Section 1 of the Constitution of Maryland, the legislative powers of the State are vested in a bicameral legislature called the General Assembly of Maryand. The upper house, or Senate, has a membership of forty-seven; the lower house, or House of Delegates, has one hundred forty-one members. Md. Const., Art. III, Sec. 2. Section 3 of Article III provides that the State shall be divided into forty-seven legislative districts, with one Senator and three Delegates elected from each district.

The current legislative districting plan traces its origins to the plan proposed by the Governor's Advisory Committee on Reapportionment. The Committee was charged with receiving public comment in order to better formulate a State legislative reapportionment plan and a congressional redistricting plan for the Governor.

The Advisory Committee held numerous public hearings between May 17, 1981 and December 8, 1981 in formulating its redistricting recommendations, 213 persons testified at these hearings. On December 8, 1981, the Committee made its recommendations to the Governor, who subsequently held two public hearings: one on December 21, 1981, at which 24 witnesses spoke, and one on December 23, 1981, at which 46 witnesses testified. After considering the testimony, the Governor adopted the majority of the Committee's recommendations. J.S. App. at A-3 to A-5.

On the first day of the 1982 Session of the General Assembly, pursuant to Article III, Section 5 of the Maryland Constitution, the Governor's Plan was introduced as House Joint Resolution 15 and Senate Joint Resolution 10. A slightly modified version of this

Plan, including technical corrections, was introduced as House Joint Resolution 32. Lengthy hearings were held before the Senate Constitutional and Public Law Committee and the House Constitutional and Administrative Law Committee. After the General Assembly approved House Joint Resolution 32 (hereinafter the Legislative Plan) on February 26, 1982, it became law in accordance with Article III, Section 5 of the Constitution of Maryland.

Responding to original proceedings instituted by Andrews and other registered voters, pursuant to Section 5 of Article III of the Constitution of Maryland, the Maryland Court of Appeals directed the hearings be conducted by a retired judge of the Court of Special Appeals, sitting as a special master.

Andrews alleged that Legislative Districts 42 and 44 violated the Maryland Constitutional requirement that districts be compact. Md. Const., Art. III, Sec. 4. It was further asserted that the Legislative Plan for Baltimore City, Legislative Districts 39 through 47, by the use of multimember at large legislative districts, diminished the proportionate representation of

Blacks and Republicans. J.S. App. at A-22. To cure these alleged defects, Andrews proposed a plan which would have created 27 single member subdistricts - three within each of the nine legislative districts.

The Special Master held an evidentiary hearing on April 14, 1982, and heard oral argument on April 28, 1982. On May 12, 1982, the Special Master issued his report and findings, rejecting, inter alia, Andrews' challenge and suggested plan. Subsequently, on June 1, 1982, the Court of Appeals of Maryland heard oral argument in support of or in opposition to the Report submitted by the Special Master. These proceedings before the Court of Appeals culminated in the per curiam order of June 4, 1982, which rejected all challenges to the Legislative Plan.

The primary election of September 14, 1982 was conducted in accordance with the per curiam order of June 4, 1982 and the Legislative Plan as adopted by the General Assembly of Maryland.

ARGUMENT

A Legislative Reapportionment Plan Does Not Invidiously Discriminate Against Blacks Or Republicans Simply Because It Creates Some Multimember Districts.

Andrews' sole claim that the use of multimember districts *per se* violates the Fourteenth Amendment, has been unequivocably rejected by this Court in a long line of cases. See *e.g.*, *City of Mobile v. Bolden*, 446 U.S. 55 (1980); *White v. Regester*, 412 U.S. 755 (1973); *Whitcomb v. Chavis*, 403 U.S. 124 (1971); *Kilgarlin v. Hill*, 386 U.S. 120 (1967); *Burns v. Richardson*, 384 U.S. 73 (1966); *Fortson v. Dorsey*, 379 U.S. 433 (1965).

Moreover, this Court, most recently in *Rogers v. Lodge*, _____ U.S. _____, 102 S.Ct. 3272 (1982), has clearly indicated that a claim of dilution of minority voting strength can be successful only if it is proved that: (1) the districting has the *effect* of making the political process leading to nomination and election less open to the minority group *and* (2) the plan was motivated by a discriminatory *purpose*. See also *City of*

Mobile v. Bolden, supra, 446 U.S. at 62, 66.[1]

Andrews has not and did not even meet the first requirement of proof in a racial dilution case, i.e., he did not produce any evidence that the Legislative Plan has the effect -- without regard to purpose -- of diluting the voting rights of a racial minority. Andrews apparently believes that the mere future possibility that Blacks or Republicans may not elect delegates in proportion to their respective populations somehow invalidates the Legislative Plan. However, it is well settled that past failure at the polls, let alone speculative future failure does not establish discriminatory effect, much less discriminatory intent.[2] City of

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[1] Andrews also asserts that the use of multimember delegate districts somehow discriminates against Blacks in violation of the Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified at 42 U.S.C. §§1971 and 1973 et. seq. (1970)), as amended by Act of June 29, 1982, Pub. L. No. 97-205, 96 Stat. 131. However, the State of Maryland is not subject to all provisions of the Voting Rights Act; its past electoral processes have not been tainted by discrimination. Moreover, as demonstrated in text Andrews did not produce any proof that they challenged apportionment plan had a discriminatory effect, let alone purpose.

[2] In contrast to Andrews' lack of evidence, the State proved that voter registration records for the selected areas in which Andrews indicated an interest revealed Republicans were in a (cont.)

Mobile v. Bolden, supra, 446 U.S. at 66 ("[I]t is not enough to show that the group allegedly discriminated against has not elected representatives in proportion to its numbers."); White v. Regester, supra, 412 U.S. at 765-766; Whitcomb v. Chavis, supra, 403 U.S. at 149-150.

CONCLUSION

Accordingly, the State respectfully submits that the question upon which this cause depends is so unsubstantial as not to need further argument, and respectfully moves this Court to dismiss this appeal, or, in the alternative, to affirm the judgment entered in the cause, by the Court of Appeals of Maryland.

Respectfully submitted,

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distinct minority and thus generally unable to elect Republican candidates. Moreover, the State's evidence below clearly demonstrated that the goal of the participants in the redistricting process was to, and did, increase the voting strengths of blacks in Baltimore City.

APPENDIX A

Pertinent Constitutional Provisions

Constitution of the United States

Amendment XIV, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of Maryland

Article III.

Section 1. Legislature to consist of two branches; to be styled General Assembly.

The Legislature shall consist of two distinct branches; a Senate and a House of Delegates, and shall be styled the General Assembly of Maryland.

Section 2. Membership of Senate and House of Dele gates.

The membership of the Senate shall consist of forty-seven (47) Senators. The membership of the House of Delegates shall consist of one hundred forty-one (141) Delegates.

Section 3. Division of State into legislative Districts; number of Senators and Delegates from each district; subdivision of districts.

The State shall be divided by law into legislative districts for the election of members of the Senate and the House of Delegates. Each legislative district shall contain one (1) Senator and three (3) Delegates. Nothing herein shall prohibit the subdivision of any one or more of the legislative districts for the purpose of electing members of the House of Delegates into three (3) single-member delegate districts or one (1) single-menber delegate district and one (1) multimember delegate district.

Section 4. Requirements for districts.

Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions.

Section 5. Legislative districting and apportionment following each decennial census.

Following each decennial census of the United States and after public hearings, the Governor shall prepare a plan setting forth the boundaries of the legislative districts for electing of the members of the Senate and the House of Delegates.

The Governor shall present the plan to the President of the Senate and the Speaker of the House of Delegates who shall introduce the Governor's plan as a joint resolution to the General Assembly, not later than the first day of its regular session in the second year following every census, and the Governor may call a special session for the presentation of his plan prior to the regular session. The plan shall conform to Sections 2, 3 and 4 of this Article. Following each decennnial census the General Assembly may by joint resolution adopt a plan setting forth the boundaries of the legislative districts for the election of members of the Senate and the House of Delegates, which plan shall conform to Sections 2, 3 and 4 of this Article. If a plan has been adopted by the General Assembly by the 45th day after

the opening of the regular session of the General Assembly in the second year following every census, the plan adopted by the General Assembly shall become law. If no plan has been adopted by the General Assembly for these purposes by the 45th day after the opening of the regular session of the General Assembly in the second year following every census, the Governor's plan presented to the General Assembly shall become law.

Upon petition of any registered voter, the Court of Appeals shall have original jurisdiction to review the legislative districting of the State and may grant appropriate relief, if it finds that the districting of the State is not consistent with requirements of either the Constitution of the United States of America, or the Constitution of Maryland.